

**DECLARATION OF RICHARD JONES  
IN SUPPORT OF PETITION TO  
FILE APPLICATION FOR UNITED STATES  
PATENT PURSUANT TO 37 CFR 1.47(b)**

I, Richard Jones, President of Lehigh Safety Shoe Co. LLC ("Lehigh Safety Shoe") make this Declaration in support of the accompanying Petition to file an Application for United States Patent Pursuant to 37 CFR 1.47(b) by Lehigh Safety Shoe. The statements made herein are based on my own knowledge, on information and belief, and on advise of counsel.

1. I am advised by counsel that pursuant to the Manual of Patent Examining Procedure, Section 409(f), a 37 CFR 1.47(b) Applicant must prove that it has sufficient proprietary interest in the subject matter to justify the filing of the application, or that the inventor, in this case, Ruk Peterson, has agreed in writing to assign the invention to the Applicant.

2. Ruk Peterson was employed by Endicott Johnson Corporation, and companies which succeeded to the safety shoe business of Endicott Johnson Corporation, including Lehigh Safety Shoe, from March 1, 1994 to June 13, 2000. Ruk Peterson was hired to design products, including the metatarsal guard of the present invention, while so employed.

3. I am advised by counsel that if an employee is hired to invent or is assigned the duty of devoting effort to a particular problem, the resulting invention belongs to the employer and the inventor is bound to assign to the employer any patent obtained. Lipscomb's Walker on Patents, (3d ed. 1986) §19.13, citing Blum v. Commission, 183 F.2d 281, 86 USPQ 118 (1950, CA 3).

4. The metatarsal guard which is the subject of the present invention was designed by Ruk Peterson pursuant to his employment with Lehigh Safety Shoe Co. and its predecessor companies and his duty to invent and design the metatarsal guard. I am advised by counsel that

therefore the present invention should be assigned to Lehigh Safety Shoe.

5. A Confidential Information and Assignment Agreement between Ruk Peterson and Endicott Johnson Corporation dated March 30, 1994 (the "Assignment Agreement") is annexed hereto as Appendix I. In consideration of Mr. Peterson's current and future employment by Endicott Johnson Corporation, Mr. Peterson printed his name on the Assignment Agreement to signify his acceptance thereof. I am advised by counsel that the Assignment Agreement was transferred with the assets of the safety shoe business from Endicott Johnson Corporation to Lehigh Safety Shoe Co., and that as a result of Lehigh Safety Shoe Co., subsequently merging with and into Lehigh Safety Shoe, Lehigh Safety Shoe has the benefit of the Assignment Agreement.

6. The Assignment Agreement provides that the:

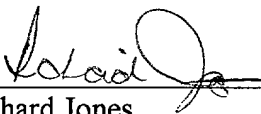
"Employee agrees to assign to the Company the entire right, title and interest, for the United States of America and all foreign countries, in and to any and all designs, manufacturing processes and copyrights that are conceived or reduced to practice by Employee (either alone or jointly with others) during the term of employment."

The metatarsal guard which is the subject of the present invention was conceived and designed by Mr. Peterson during his employment with Lehigh Safety Shoe and/or its predecessor companies. I am advised by counsel that therefore, pursuant to the Assignment Agreement, the present invention should be assigned to Lehigh Safety Shoe.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are

punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 5/25/01

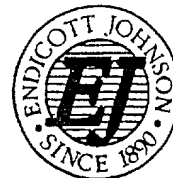
  
\_\_\_\_\_  
Richard Jones  
President  
Lehigh Safety Shoe Co. LLC

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## APPENDIX I

## CONFIDENTIAL INFORMATION AND ASSIGNMENT AGREEMENT



It is the policy of Endicott Johnson Corporation (the "Company") that, except as hereinafter specifically provided, Confidential Information, as hereinafter defined, shall not be disclosed to third parties without the expressed written consent of the Company.

"Confidential Information" means information, not generally known to third parties and disclosed or made known to an employee as a consequence of or through his/her employment by the Company, about the Company's products, customers, merchandising, sales, profits and operations including, without limiting the generality of the foregoing, the following proprietary information:

- A. Information concerning the Company's operations, procedures, and the systems supporting such operations and procedures.
- B. Financial data pertaining to the Company, including but not limited to, costs of product, sales, payroll, financial statements (whether audited or unaudited) and information pertaining to the profitability of the Company or any operation or division thereof.
- C. Marketing and advertising strategies that the Company currently is involved with, employs or is planning.
- D. Information pertaining to the Company's sourcing of products, including but not limited to, contents of letters of credit, suppliers and supplier's prices and terms of sales to the Company, agency relations and the Company's importing practices and procedures.
- E. Information pertaining to site selection, or geographic areas that the Company has targeted for expansion or retraction, or any information pertaining to any Company contract, lease or other agreement of any type whatsoever, whether in negotiation or fully executed.
- F. Personnel information including, but not limited to, the salary, wage and employment history of any former employee or of those presently in the Company's employ.
- G. Any other information the disclosure of which could, in any manner, adversely affect the Company's business.

The term "Company" shall mean Endicott Johnson Corporation, its parent companies, and all of its subsidiary and affiliated companies.

The undersigned employee ("Employee") recognizes and acknowledges that the above described Confidential Information is a valuable Company asset and that in consideration of his/her employment Employee will not, during or after the term of his/her employment, disclose such Confidential Information to any person, firm, corporation, association or other entity for any reason or purpose whatsoever except when required in the normal course of Employee's performance of his/her assigned duties as an employee or when such disclosure is required by law.

In the event of a breach or threatened breach by the Employee of the provisions of this agreement, the Company shall be entitled to an injunction restraining the Employee from disclosing, in whole or in part, any Confidential Information. Nothing herein shall be construed as prohibiting the Company from pursuing any other remedies available to the Company for such breach or threatened breach of disclosure, including the recovery of damages from the Employee.

Upon termination of his/her employment, Employee shall immediately return to the Company all charge and credit cards, business equipment and all other Company property, including, but not limited to, files, manuals, records and/or reports relating to any and all aspects of the Company's business.

Employee agrees to assign to the Company the entire right, title and interest, for the United States of America and all foreign countries, in and to any and all designs, manufacturing processes and copyrights that are conceived or reduced to practice by Employee (either alone or jointly with others) during the term of employment.

The undersigned hereby acknowledges that he/she has read the foregoing Confidential Information and Assignment Agreement and in consideration of employee's current and/or future employment by the Company hereby signifies his/her acceptance thereof and his/her agreement to comply with its terms and adhere to its proscriptions.

Dated

3/03/94

*Carolyn L. Ligouri*  
Witness' Signature

*RLK R. PETERSON*

Employee's Name (Print)

Employee's Signature

**DECLARATION OF MILTON WOLSON  
IN SUPPORT OF PETITION TO FILE  
APPLICATION FOR UNITED STATES PATENT  
PURSUANT TO 37 CFR 1.47(b)**

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I, Milton Wolson, a member of the bar of the State of New York, with offices at 60 East 42nd Street, New York, NY 10165, make this Declaration in support of the accompanying Petition to file an Application for United States Patent Pursuant to 37 CFR 1.47(b), by Lehigh Safety Shoe Co. LLC ("Lehigh Safety Shoe").

1. The subject matter of the Application for United States Patent Pursuant to 37 CFR 1.47(b) is a patent application titled "Metatarsal Guard" for an invention by Ruk Peterson, a former employee of Lehigh Safety Shoe.

2. The Manual of Patent Examining Procedures ("MPEP") Section 409.03(d) requires that when a 37 CFR 1.47(b) Applicant concludes that a non-signing inventor's conduct constitutes a refusal to sign the application papers, all the facts upon which that conclusion is based should be stated in a Declaration. Such facts and the supporting documentary evidence are set forth below:

- a. On January 10, 2001, I forwarded the patent application which is the subject matter of the present Petition and related documents to Mr. Peterson and requested him to execute the documents and return them to me. A copy of my January 10, 2001 letter to Mr. Peterson is annexed hereto as Appendix I.
- b. On February 9, 2001, I wrote to Mr. Peterson and included a copy of his Confidential Information and Assignment Agreement. I again requested Mr. Peterson to execute the documents. A copy of my February 9, 2001 letter is annexed hereto as

Appendix II.

c. On February 26, 2001, I wrote to Mr. Peterson and inquired whether he intended to execute the documents. A copy of my February 26, 2001 letter is annexed hereto as Appendix III.

d. On April 25, 2001, I again wrote to Mr. Peterson and requested him to execute the documents and return them to me as soon as possible. A copy of my April 25, 2001 letter is annexed hereto as Appendix IV.

e. Mr. Peterson did not return the executed documents to me.

Based on the foregoing, Applicant has concluded that Mr. Peterson's conduct constitutes a refusal to sign the application papers.

4. MPEP 409(e) requires that a 37 CFR 1.47(b) Applicant state the last known address of the non-signing inventor. Mr. Peterson's last known address is:

Ruk Peterson  
1039 Elton Drive  
Endicott, N.Y. 13760

5. MPEP 409(g) requires that a 37 CFR 1.47(b) Applicant establish that irreparable damage will occur unless a filing date is received. In the present case, the metatarsal guard which is the subject matter of the present application is intended to be publicly disclosed in July, 2001. Unless a filing date is received before the public disclosure, the Applicant will be unable to file corresponding foreign patent applications, if it chooses to do so, and will therefore be irreparably damaged.

6. To establish irreparable injury, MPEP 409(g) alternatively provides that preservation of the rights of the parties may be demonstrated by a showing that the inventor may reasonably be

expected to enter into competition with the 37 CFR 1.47(b) Applicant. In the present case, Mr. Peterson informed the undersigned during a telephone discussion on February 6, 2001 that he was working or intended to work with another company to develop a metatarsal guard based on the design which is the subject of the present invention. That telephone discussion is reflected in my February 9, 2001 letter to Mr. Peterson, Appendix II. Thus, because there is a reasonable expectation that Mr. Peterson may enter into competition with Lehigh Safety Shoe, the present Petition should be granted in order to preserve the rights of the parties.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: May 23, 2001

Milton Wolson  
Milton Wolson



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## APPENDIX I

PATENT, TRADEMARK, COPYRIGHT  
& UNFAIR COMPETITION LAW

LAW OFFICES  
**MALINA & WOLSON**

60 EAST 42ND STREET  
NEW YORK, N.Y. 10165

(212) 986-7410

TELECOPIER: (212) 983-8421  
CABLE: FRANKSSON

January 10, 2001

**VIA COURIER**

Mr. Ruk Peterson  
1039 Elton Drive  
Endicott, NY 13760

Dear Ruk:

**New U.S. Pat. Appln. for  
"METATARSAL GUARD"  
Our File: LEH-33**

I hope that the New Year finds you in good health and that all is going well.

The company has decided to file a patent application for your metatarsal guard design and I would appreciate your executing the enclosed "Declaration and Power of Attorney" and "Assignment", in the following manner:

1. Please review the application attached to the "Declaration and Power of Attorney". If you find the application to be in order, please sign and date the "Declaration and Power of Attorney". Copies of U.S. Pat. No. 4,231,170 and U.S. Pat. No. 5,457,898, referred to in the application are enclosed for your information.

2. Please review the enclosed "Assignment" and insert the date on which the "Declaration and Power of Attorney" was executed on the first page of the "Assignment", and sign and date the "Assignment" before a Notary Public.

Please return the "Declaration and Power of Attorney" and "Assignment" in the enclosed

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MALINA & WOLSON

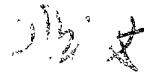
Mr. Ruk Peterson  
January 10, 2001  
Page 2

Fed Ex envelope. Please do not hesitate to contact me if you have any questions.

Kind regards.

Yours truly,

MALINA & WOLSON



Milton Wolson

MW:jg  
encls.

0997542-000001

APPLICATION FOR UNITED STATES PATENT  
DECLARATION AND POWER OF ATTORNEY

As the below named inventor, I declare that my residence, post office address and citizenship are as stated below next to my name; that I verily believe that I am the original, first and sole inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled as set forth below, which is described in the attached specification; that I have reviewed and understand the contents of the specification, including the claims; that no application for patent or inventor's certificate on this invention has been filed by me or my legal representatives or assigns in any country foreign to the United States of America; and that I acknowledge my duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, section 1.56(a);

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Title of Invention:       METATARSAL GUARD

I hereby appoint Milton Wolson, Esq., Reg. No. 22,620, of Malina & Wolson, 60 East 42<sup>nd</sup> Street, New York, NY 10165, telephone (212) 986-7410, facsimile (212) 983-8421, my attorney to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

Please send correspondence with respect to this application to Milton Wolson, Esq. at the above address.

Name of Inventor:	Ruk Peterson
Resident and Post Office Address:	1039 Elton Drive Endicott, N.Y. 13760
Country of Citizenship:	U.S.A.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

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